

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California
Date: August 24, 2006
Resolution No. L-333

RESOLUTION

**RESOLUTION AUTHORIZING DISCLOSURE OF COMMISSION
CONSUMER SERVICES DIVISION (UTILITIES SAFETY
BRANCH) INVESTIGATION RECORDS PURSUANT TO PUBLIC
RECORDS ACT REQUEST BY SCOTT D. ZONDER SEEKING
DISCLOSURE OF COMMISSION STAFF INVESTIGATION
RECORDS RELATING TO AN AUGUST 13, 2002 GAS INCIDENT
IN TORRANCE, CALIFORNIA. (INCIDENT NO. G20020813).**

BACKGROUND

A letter dated May 26, 2006, from Scott D. Zonder, attorney for El Redondo Termite Control, Inc., appeals California Public Utilities Commission (Commission) staff's initial denial of a subpoena for records concerning the Commission's investigation of a gas incident on August 13, 2002 in Torrance, California, which occurred when a home was being fumigated. Commission staff previously informed the requester that the Commission's investigation records could not be made public without the formal approval of the Commission.

DISCUSSION

The requested records are "public records" as defined by the California Public Records Act (PRA). (Government Code § 6250 et seq.) The California Constitution, PRA, and discovery law, favor disclosure of public records. The public has a constitutional right to access government information. (California Constitution, Article 1, § 3 (a).) Statutes, court rules, and other authority limiting access to information must be broadly construed if they further the people's right of access, and narrowly construed if they limit the right of access. (California Constitution, Article 1, § 3 (b)(2).) New statutes, court rules, or other authority that limit the right of access must be adopted with findings demonstrating the interest protected by the limitation and the need to protect that interest. (Id.)

The PRA provides that a an agency must base a decision to withhold a public record in response to a PRA request upon the specified exemptions listed in the Act, or a showing that, on the facts of a particular case, the public interest in confidentiality clearly outweighs the public interest in disclosure.¹

The Commission has exercised its discretion under Public Utilities Code § 583, and implemented its responsibility under Government Code § 6253.4 (a), by adopting guidelines for public access to Commission records. These guidelines are embodied in General Order 66-C. General Order 66-C § 1.1 provides that Commission records are public, except “as otherwise excluded by this General Order, statute, or other order, decision, or rule.” General Order 66-C, § 2.2 precludes staff’s disclosure of “[r]ecords or information of a confidential nature furnished to or obtained by the Commission ... including: (a) Records of investigations and audits made by the Commission, except to the extent disclosed at a hearing or by formal Commission action.” Section 2.2 (a) covers both records provided by utilities in the course of a Commission investigation and investigation records generated by Commission staff.

Because General Order 66-C § 2.2 (a) limits staff’s ability to disclose Commission investigation records in the absence of disclosure during a hearing or a Commission order authorizing disclosure, staff denies most initial requests and subpoenas for investigation records. Staff usually informs requesters of the option under General Order 66-C § 3.4 to appeal to the Commission for disclosure of the records. If an appeal is received, staff prepares a draft resolution for the Commission’s consideration.

There is no statute forbidding disclosure of the Commission’s safety investigation records. During the past twelve years the Commission has ordered disclosure of records concerning completed safety incident investigations on numerous occasions.² Disclosure does not interfere with its investigations, and may lead to discovery of admissible evidence and aid in the resolution of litigation regarding the accident/incident under investigation.³ Most of these resolutions responded to

¹ The fact that records may fall within a PRA exemption does not preclude the Commission from authorizing disclosure of the records. Except for records which may not be disclosed by law, PRA exemptions are discretionary, rather than mandatory, and the Commission is free to refrain from asserting such exemptions when it finds that disclosure is appropriate. See Government Code § 6253 (e); *Black Panthers v. Kehoe* (1974) 42 Cal. App.3d 645, 656.

² Where appropriate, the Commission has redacted portions of investigation records which contain confidential personal information, the disclosure of which would constitute an unwarranted invasion of privacy, and other exempt or privileged information.

³ See, e.g. Commission Resolutions L-240 *Re San Diego Gas & Electric Company*, rehearing denied in D.90-05-020 (1993), 49 CPUC 2d 241; L-309 *Re Corona* (December 18, 2003); and L-320 *Re Knutson* (August 25, 2005).

disclosure requests and/or subpoenas from individuals involved in electric or gas utility incidents (accidents), the families of such individuals, the legal representatives of such individuals or families, or the legal representatives of a defendant, or potential defendant, in litigation related to an accident/incident.

Portions of incident investigation records which include personal information may be subject to disclosure limitations in the Information Practices Act (IPA) (Civil Code § 1798 et seq.). However, the IPA authorizes disclosure of personal information “Pursuant to the California Public Records Act.” (Civil Code § 1798.24 (g).) While the PRA exempts personal information from mandatory disclosure, where disclosure would constitute an unwarranted invasion of personal privacy (Government Code § 6254 (c)), no information in the current incident investigation file requires redaction.

The Commission has often stated that Public Utilities Code § 315, which expressly prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, “as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property,” offers utilities sufficient protection against injury caused by the release of requested investigation records.

COMMENTS ON DRAFT RESOLUTION:

The Draft Resolution of the Legal Division in this matter was mailed to the parties in interest on July 25, 2006, in accordance with Public Utilities Code § 311(g). Comments were received from Sempra Energy on August 10, 2006. Sempra, on behalf of the Southern California Gas Company (SoCalGas) objects to the disclosure of certain confidential or private information to the extent contained within the requested investigation records. Specifically, SoCalGas states that:

to the extent the Investigation Records at issue contain customer-specific or facility information that, if made public, could compromise system security, SoCalGas strongly objects to their disclosure. With respect to customer-specific information, the Commission has previously recognized that utility customers have a reasonable expectation of privacy and accordingly has acted to protect utility customer-specific information from public disclosure [footnote citing D.97-12-088; D.99-09-002; D.01-07-032; and D.90-12-121 omitted.] (Comments, p. 2.)

SoCalGas also states:

In addition, SoCalGas objects to the disclosure of utility reports or information contained in the Investigation Records that were submitted by SoCalGas under Section 583 of the California Public Utilities Code (Code) and GO 66-C. Such reports include Safety-Related Reports as well as Utility Quarterly Reports which are provided to the Commission pursuant to Code Section 583 and GO 66-C and submitted as “confidential” by SoCalGas. Such reports and information should remain confidential because they typically include names, addresses, and telephone numbers of SoCalGas customers. Moreover, Gas Incident Reports provided to the Commission by SoCalGas are also considered “confidential” within the meaning of Section 2.2 (a) of GO 66-C.

While the Commission may have the discretion to make such confidential records public, it should do so only when the public interest is served by the disclosure. The requester has not shown how its litigation interest outweighs either the legitimate privacy interests of utility customers or the public’s interest in ensuring the security of SoCalGas’ gas facilities.

Accordingly, the Commission should appropriately narrow the scope of information disclosed in the final resolution in order to properly balance the privacy interests of utility customers; the public’s interest in secure gas system facilities; and the utility’s confidentially submitted data, with the requester’s litigation interest, by redacting certain information as discussed herein prior to disclosure. The Commission should also provide SoCalGas with copies of any information provided to the requester(s).

Conclusion

For the reasons discussed above, SoCalGas respectfully requests that the Commission redact, *as applicable*, any information contained in its Investigation Records related to Gas Incident No. G20020813 prior to disclosure that, a) is customer-specific, b) details the facilities of SoCalGas, c) includes information directly derived from materials provided to the Commission as “confidential” pursuant to Section 583 of the California Public Utilities Code (Code) and/or Section 2.2 of GO 66-C, including specifically SoCalGas’ Utility Quarterly Reports and Gas Incident

Reports. Finally, SoCalGas requests that it be provided any materials provided by the Commission to the requesting party. (*Id.*, pp. 2-3.)

Response

Customer Specific Information

We believe that individual expectations of privacy in the context of a broad program involving individual interactions with government agencies vary, and cannot be easily and correctly characterized through any generalized assumption that all such individuals do, or do not, expect that all information regarding such interactions may kept from the public.

In Resolution L-332, the Commission addressed the issue of the confidentiality of personal information in investigation records as follows:

We have long recognized that accident investigation records contain personal information, the disclosure of which may in some situations result in an unwarranted invasion of personal privacy. In limited circumstances, we have redacted such information from records we have provided, on the ground that it is exempt from disclosure pursuant to Government Code § 6254 (c), and/or is subject to the conditional official information privilege set forth in Evidence Code § 1040 (b)(2). As a general rule, however, we have limited such redactions to personal information concerning accident victims or their families, and have disclosed the names and contact information of utility employees involved in reporting or investigation the accident, individuals associated with any non-utility entity employing any individuals involved in the accident, any other governmental employees involved in activities associated with the accident, and so on. We felt that disclosure of the identities of individuals dealing with the accident in a professional capacity did not constitute an unwarranted invasion of their personal privacy, whether or not they may prefer to remain wholly anonymous. In our view, such individuals have no reasonable expectation in the privacy of such information, given their professional relationship to the accident. The personnel, medical, and similar files exemption in Government Code § 6254 (c) was developed to protect intimate details of personal and family life, not business relationships. (*Bakersfield School District v. Superior Court, supra*, 118 Cal.App.4th 1041.)

Given that many requests and subpoenas for accident records come from accident victims, their families, or their legal representatives, and that the purpose of such requests and subpoenas is often primarily to obtain information that may be useful in litigation relating to the accident, we have not always found that the disclosure of some personal information concerning victims or their families constituted an unwarranted invasion of personal privacy. When one becomes involved as a plaintiff in litigation regarding an accident, one of necessity diminishes one's realistic expectation of privacy regarding personal information relevant to such litigation. (*See, e.g., Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4th 1496, *rehearing denied*.) Even in such cases, however, we have sometimes redacted from records disclosed to the public personal information such as social security numbers, and the like.

We are not persuaded to change our practices regarding disclosure of personal information in incident reports at this time. As we have done when responding to other Public Records Act requests, we will reserve our right to redact a limited amount of personal information concerning incident victims, their families, or others, where we find that disclosure would constitute an unwarranted invasion of personal privacy, but will disclose such information regarding those associated with the incident in a professional capacity. (Resolution L-332, pp. 19-20.)

This particular records request was made by Scott D. Zonder, attorney for El Redondo Termite Control, Inc.. El Redondo Termite Control, Inc., is a party to litigation regarding this incident, in which a number of individuals were injured. As a party to this litigation, the requester undoubtedly is already aware of the identities and other personal information regarding individual utility customers or other individuals involved in the incident who are also parties to the litigation. Since formal litigation documents on file with the court of necessity identify known plaintiffs and defendants, there seems little reason for the Commission to protect the privacy of this information through redaction of the identities and addresses of such individuals to the extent they are included in our records.

If, upon our further review of the investigation records, we identify personal information relating to individuals associated with this incident in a purely non-professional and non-litigant capacity, we will redact it before providing the requested records.

Facility Information that Could Compromise Security

The Commission shares SoCalGas' belief that utility facility information that, if made public, could compromise system security, should not be disclosed to the public. The request at issue seeks information regarding an incident at a single family residence. Disclosure of information regarding this specific event is unlikely to compromise national security.

"Confidential" Reports

SoCalGas appears to assume incorrectly that its identification of Safety-Related Reports and Utility Quarterly Reports as "confidential" under Public Utilities Code § 583 and GO 66-C requires that the Commission treat those records as confidential and that those seeking records from the Commission bear the burden of showing how their interest in such records outweighs either the legitimate privacy interests of utility customers or the public's interest in the security of SoCalGas' gas facilities.

As noted in Resolution L-332:

neither Quarterly Summary Reports (General Order 112-E § 122.2 (d)) nor Safety-Related Condition Reports (General Order 112-E § 124) are deemed confidential by General Order 112-E. Several utilities, however, identify such reports as confidential. We find no public interest served by keeping such information from the public. We take this opportunity to remind utilities that General Orders which require utilities to report to the Commission do not provide that such information will be confidential unless specific provisions of the General Orders identify specific information as confidential. The California Constitution, Article 1, § 3 (b)(2), requires that a "statute, court rule, or other authority, ... shall be broadly construed if furthers the people's right of access, and narrowly construed if it limits the right of access. (Resolution L-332, p. 7-8.)

As also noted in Resolution L-332, from a Public Records Act standpoint, "it does not generally matter why someone wants to view particular public records. (*See, e.g., Orange County Employees Association, Inc. v. Superior Court* (2004) 120 Cal.App.4th 287, 295.)" (Resolution L-332, p. 12.) A balancing of interests for and against disclosure may still be necessary and appropriate, but that balancing is the duty of the agency, not the requester.

Resolution L-332, addressed the issue of the confidentiality of Safety-Related Reports and Quarterly Reports filed by SoCalGas, and concluded that while certain personal information in such reports should generally be redacted from records made available to the public, the information to be redacted should generally be limited to the names, addresses, and telephone numbers of individuals who reported gas incidents to the utility. Addresses at which incidents occurred were disclosed, as was information regarding entities involved in incidents. This practice will be followed with regard to any Safety-Related Reports or Quarterly Reports included in the investigation file at issue.

No other comments require discussion.

FINDINGS OF FACT

1. The Commission received a letter seeking disclosure of Commission investigation records concerning a gas incident that occurred on August 13, 2002, in Torrance, California, while a home was being fumigated. Access to the records in the investigation file was denied in the absence of a Commission order authorizing disclosure.
2. The Commission's investigation of the August 13, 2002 accident is closed; therefore, the disclosure of the investigation records would not compromise the investigation.
3. The public interest favors disclosure of the requested investigation records, subject to the redaction of personal information if any, concerning individuals associated with the incident in a purely non-professional and non-litigant capacity.

CONCLUSIONS OF LAW

1. The documents in the requested investigation file and report are public records as defined by Government Code § 6250 et seq.
2. The California Constitution favors disclosure of governmental records by, among other things, stating that the people have the right of access to information concerning the conduct of the peoples' business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Furthermore, the California Constitution also requires that statutes, court rules, and other authority favoring disclosure be broadly construed, and that statutes, court rules, and other authority limiting

disclosure be construed narrowly; and that any new statutes, court rules, or other authority limiting disclosure be supported by findings determining the interest served by keeping information from the public and the need to protect that interest. California Constitution, Article 1, § 3 (b) (1) and (2).

3. The general policy of the Public Records Act favors disclosure of records.
4. Justification for withholding a public record in response to a Public Records Act request must be based on specific exemptions in the Public Records Act or upon a showing that, on the facts of a particular case, the public interest in nondisclosure clearly outweighs the public interest in disclosure. (Government Code § 6255.)
5. The Commission has exercised its discretion under Public Utilities Code § 583 to limit staff disclosure of investigation records in the absence of formal action by the Commission or disclosure during the course of a Commission proceeding. (General Order 66-C § 2.2 (a).)
6. Public Utilities Code § 583 does not limit the Commission's ability to order disclosure of records.
7. Public Utilities Code § 315 prohibits the introduction of accident reports filed with the Commission, or orders and recommendations issued by the Commission, "as evidence in any action for damages based on or arising out of such loss of life, or injury to person or property."

ORDER

1. The request for disclosure of the Commission's records concerning the investigation of a gas incident that occurred on August 13, 2002 in Torrance, California, while a home was being fumigated, is granted, subject to redaction of personal information, if any, relating to individuals associated with this incident in a purely non-professional and non-litigant capacity.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of August 24, 2006 and that the following Commissioners approved it:

STEVE LARSON
Executive Director